

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**LETTERS PATENT APPEAL No. 1009 of 2007****IN****SPECIAL CIVIL APPLICATION No. 5521 of 2007****For Approval and Signature:****HONOURABLE MR.JUSTICE A.L.DAVE****HONOURABLE MR.JUSTICE SHARAD D.DAVE**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BANK OF BARODA & Another.**Versus****JASUMATI WD/O VALABHAI JADAV .**

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Appearance :

MR DARSHAN M PARIKH for the Appellants

MR BP GUPTA for the Respondent.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE**and****HONOURABLE MR.JUSTICE SHARAD D.DAVE****Date : 05/09/2007**

ORAL JUDGMENT**(Per : HONOURABLE MR.JUSTICE A.L.DAVE)**

1. Heard learned Advocate, Mr. Parikh, for the appellants and learned Advocate, Mr. Gupta, for the respondent. In light of order passed by the earlier Bench, this appeal is taken up today for final hearing.

2. Learned Advocate, Mr. Parikh, submitted that the order impugned (order dated 1st March, 2007, passed in Special Civil Application No.5521 of 2007) was passed by the learned Single Judge, in following terms, without granting an opportunity of being heard to the appellants:-

“5. Therefore, it is directed to the respondents – Bank of Baroda to consider the decision of the Apex Court as referred above and also to reconsider the application of petitioner for compassionate appointment as per policy prevailing at the relevant time and not for subsequent policy which was revised in the year 2004 and pass appropriate reasoned order in accordance with law within a period of two months from the date of receiving the copy of the said order and communicate the same to the petitioner immediately.”

Mr. Parikh submitted that learned Single Judge has directed the appellants to reconsider the application of the respondent for compassionate appointment as per the policy prevailing at the relevant time and not the subsequent policy, which has been revised in the year 2004. Mr. Parikh submitted that this direction to consider the case of the respondent according to old policy is given without affording

opportunity to the appellants to represent their case. According to the appellants, the judgment of the Apex Court does not lay down any ratio, but the order was passed in light of facts of that case, where the appointment was already offered to the petitioner by the State Government, but the implementing authority refused to implement the order and the question, therefore, was whether the implementing authority (District Magistrate) was justified in refusing to provide for the post. In the instant case, the position is different, which could have been brought to the notice of the learned Single Judge for his consideration by the appellant had the appellant been given an opportunity to do so. Mr. Parikh submitted that, even according to the old policy, the respondent does not have any merits for being considering for appointment on compassionate ground. All these aspects could have been brought to the notice of the learned Single Judge and, therefore, this appeal may be allowed and the order in question may be set aside.

3. Learned Advocate, Mr. Gupta, submitted that the order is innocuous and only directs the appellants to consider the case of the respondent and, therefore, may not be interfered with.

4. We have considered rival side contentions. We may note that there is no dispute on the question that the order impugned was passed without notice to and without affording opportunity of hearing to the appellants. We are unable to accept the contention raised by learned Advocate, Mr. Gupta, that the order impugned merely directs the appellants to consider the case of the respondent. If the order is read, it is clear that the direction is not only to consider the case of the respondent but also to consider it in light of the old policy and not the new one which, according to the appellants, is not applicable to the case of the respondent. Had the appellants been heard, they could have

pointed out these aspects. Under the circumstances, without making any observations on merits of the case, we are of the view that ends of justice would be served, if the parties get opportunity to put their respective cases.

5. In the result, the appeal is allowed. The order impugned is hereby quashed and set aside. Special Civil Application No.5521 of 2007 is revived. It be placed before the Bench taking up the matter for hearing on merits. No costs.

[A. L. DAVE, J.]

[S. D. DAVE, J.]

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